Major Projects

LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2018

SECOND CONSULTATION PAPER & REVISED DRAFT EXPOSURE BILL

December 2017

Department of Justice

Tasmanian Government

Contents

Purpose

The purpose of this second consultation paper is to facilitate further consultation on the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2018 (draft Bill), which is designed to implement the Tasmanian Government's major projects reform commitments. The revised draft Bill and this second consultation paper have been prepared by the Department of Justice following the first phase of consultation and advice from relevant State Government regulators and agencies.

As part of the drafting process for the initial draft Bill, the Tasmanian Government facilitated a public consultation process to seek stakeholder comment. Following release of the draft Bill for a period of targeted stakeholder consultation, the draft Bill was publicly released on 28 August 2017 for a five-week period of public consultation that closed on 2 October 2017.

One hundred and ninety-eight (198) submissions were received from State Service Agencies, the Planning Reform Taskforce, the Local Government Association of Tasmania, local councils, infrastructure providers (TasWater, TasNetworks, Hydro Tasmania), industry groups and organisations, environmental groups and individuals.

In response to the submissions received, the draft Bill has been amended and re-structured to clarify its operation. Given a number of amendments have been made to the draft Bill, it is now being released for a further period of public consultation.

This consultation paper provides an overview of the Tasmanian Government's reform commitments and surrounding policy context. It also provides an overview of the key issues raised in the submissions, along with the modifications that have been made in response to the submissions.

To assist the public consultation process, the Planning Policy Unit within the Department of Justice has also prepared a number of Fact Sheets that explain key aspects of the major projects assessment process. The Fact Sheets can be accessed on the Tasmanian Planning Reform website at http://www.planningreform.tas.gov.au/updates/major_projects_reforms.

As the consultation period extends over the Christmas and New Year holidays, the period for submissions on the revised draft Bill will run for an eight-week period and finish at the close of business on **Monday, 29 January 2018.** Submissions should be headed 'Major Projects Reform' and emailed to planning.unit@justice.tas.gov.au or posted to the following address:

Planning Policy Unit
Department of Justice
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Hobart TAS 7001

Introduction

What are major projects and why are they important?

Major projects can have significant economic and social benefits. They contribute to local, state and national income, create employment opportunities during their construction and operation and they can raise productivity and generate revenue through royalties and taxation, thereby helping to fund government programs that benefit the broader community.

Private or public sector proponents can initiate major projects across a range of industries and sectors, including tourism, infrastructure, mining and processing.

Major projects are typically larger, more complex and have broader economic, environmental and social impacts beyond a single municipal area, than other development proposals. They frequently require multiple approvals connected with the use and development of the land, including land use planning, environmental and other approvals.

The draft Bill is designed to provide for a more transparent, dedicated and comprehensive process for assessing projects that are complex and require a range of permits that are currently required to be sought separately.

Why are major projects assessed differently to other development applications?

All State and Territory governments have established dedicated development assessment and approval pathways for major projects that elevate them above normal planning assessment processes.

Major projects can also require Commonwealth Government approval where they involve activities that are likely to impact significantly on matters of national environmental significance under the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*. In order to reduce duplication and overlap between Commonwealth and State environmental assessment and approval processes, bilateral agreements have been entered into between the Commonwealth Government and each State and Territory government to accredit particular State and Territory assessment and approval processes. Tasmania's current bilateral assessment processes, including the Projects of Regional Significance assessment process, were accredited in 2014 under these arrangements.

It is intended to ensure that the major projects assessment process is accredited under the Bilateral Agreement. This will be formalised once the Tasmanian Parliament passes the final legislation.

How are major projects currently assessed in Tasmania?

Depending on the nature of the project, the scale and complexity of impacts and the level of capital investment involved, there are three dedicated assessment pathways currently available for a major project in Tasmania:

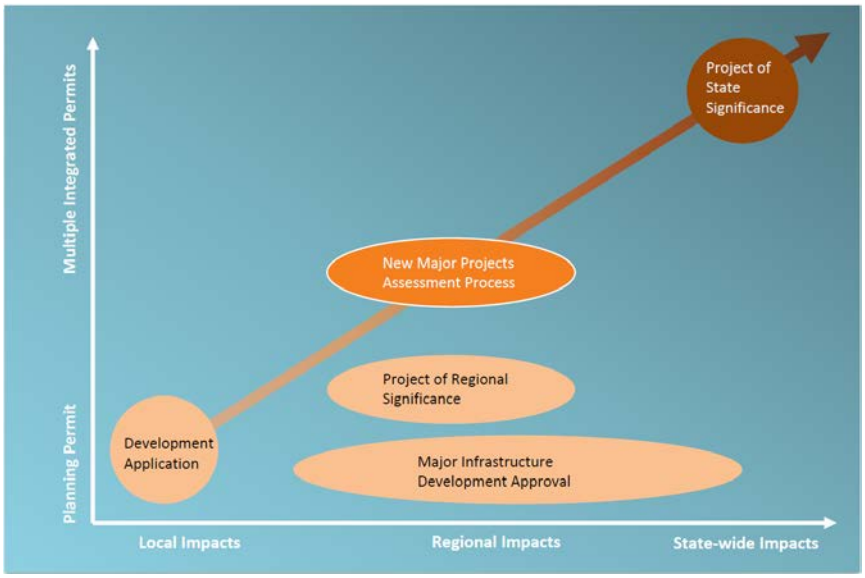
- Projects of State Significance (POSS) process under the *State Policies and Projects Act 1993*. This is for projects involving significant capital investment, statewide impacts or complex technical design;
- Projects of Regional Significance (PORS) process under the *Land Use Planning and Approvals Act 1993* (LUPAA). This option was introduced in 2009 to bridge the gap between a normal Development Application (DA) and a POSS by providing an independent, robust and equitable process for dealing with larger and more complex projects that do not qualify as a POSS but have impacts across council boundaries and wider regional areas; and the
- Major Infrastructure Development Approval (MIDA) process under the *Major Infrastructure Development Approvals Act 1999*. This option is for major linear infrastructure proposals comprising a road, railway, pipeline, power-line, telecommunications cable or other prescribed linear infrastructure.

The focus of the Tasmanian Government's reforms is on projects that are covered by the current PORS process. That is, projects that are complex, have significant economic, social or environmental impact, impact across and beyond council boundaries and/or that require multiple approvals (including planning, environmental and other approvals), but do not qualify as a POSS.

No changes are proposed to the POSS process.

The relationship between these processes and an ordinary development application in terms of the range of permits or approvals they provide and their potential scale of impacts is illustrated below in Figure 1.

Figure 1: Continuum of development application processes in Tasmania



Why are changes needed?

It is important that Tasmania has a major project assessment process that enables regionally significant proposals to achieve staged approvals. The major project assessment process ought to be based on a comprehensive independent assessment that follows appropriate public consultation, thereby providing the applicant with a high degree of certainty of achieving full approval if prescribed conditions are met.

Since its introduction, the PORS process has not been used. Proponents have continued to use other development assessment and approval pathways that are not necessarily designed for, or well suited to, assessing complex regional projects that require multiple approvals.

In consultation with key stakeholders, the Tasmanian Government has identified a number of factors that may be contributing to this reluctance to utilise the PORS process.

Under the PORS process, proponents are required to spend large amounts of time and money preparing detailed reports and studies to satisfy technical requirements for land use planning and environmental issues before they even know whether their proposal meets the basic criteria for approval. This has been identified as being a disincentive to proponents entering the process and not being conducive to attracting and encouraging investment in this State.

The lack of certainty is also reflected in other aspects of the PORS process, including the amount and timing of assessment fees and the timeframes (many of which are unspecified) for the assessment process.

In addition, the PORS process is limited to only assessing land use planning and environmental issues. This means that where other approvals are required before the project can proceed, the proponent is required to seek separate approvals. For many projects, these are likely to include approvals under Aboriginal cultural heritage, historic cultural heritage, threatened species, nature conservation legislation and/or infrastructure provision such as water and gas.

Despite the criteria for attaining PORS status being similar to the criteria for attaining POSS status, the scope of permits delivered under the PORS process is closer to the normal Development Application (DA) process and the longer and more complex assessment still requires a range of other permits to be approved afterwards.

In addition, the Tasmanian Government has identified Ministerial declaration powers under PORS as an area of concern. Currently under the PORS process, the declaration power relates only to the scale or complexity of the project and the relevant Minister has no ability to declare a project for independent assessment if there are unreasonable delays by the local planning authority in conducting the land use planning assessment.

These apparent shortcomings in the PORS process have led the Tasmanian Government to develop this new major projects assessment process to provide for fair, robust and more predictable outcomes.

The importance of the first round of consultation

The review of the major projects assessment processes is one of substantial interest to many sections of the Tasmanian community – including industry, property developers, investors, community groups, environment organisations, tourism interests, and agricultural enterprises to name a few.

This proposed major projects assessment process is a new approach and the scope of permits and approvals, along with the extensive assessment processes and consultation opportunities, will substantially benefit from broad feedback and suggested changes.

One hundred and ninety-five (198) submissions were received on a number of issues on the draft Bill.

A number of the issues raised were common across many submissions, noting that one hundred and sixty two (162) submissions were received through the Tasmanian Conservation Trust based on a template.

The submissions raised a number of concerns about the draft Bill including the criteria for a major project being too wide, the scope of the Minister's powers to declare projects, and the retention of the current appeals process in the existing PORS legislation.

Key issues raised in the submissions – modifications

Key issues raised in the submissions were as follows:

- timeframes are too short;
- loss of current legislative powers for infrastructure providers;
- eligibility criteria – meeting two or more of the threshold attributes;
- the scope of the Minister's declaration powers are too wide – unreasonable delay;
- excluding high buildings from the major projects assessment process;
- Minister approving guidelines – significant expansion of the Minister's powers;
- State Policies as a consideration in the declaration process;
- application of the *Tasmanian Planning Commission Act 1997*;
- establishment and composition of the Development Assessment Panel;
- procedures of the Development Assessment Panel;
- participating regulators to provide final advice after hearings;

- minor amendment of a Major Project Permit; and
- two-year restriction on making a new application if the major project is refused.

Timeframes are too short

A number of submissions contended that various timeframes throughout the major projects process appear to be very short (or unrealistic) and potentially do not allow sufficient time for regulators to undertake thorough assessments, seek input from State Service Agencies as part of their due process and, for the Development Assessment Panel (the Panel) to prepare appropriate and defensible documentation.

Response

In response to the overall concerns, the revised draft Bill has been modified as follows.

- The timeframe at subsection 60ZU(2) where participating regulators advise whether the Assessment Guidelines have been met has been increased from 14 to 21 days, and at subsection 60ZV(3) the timeframe for the Panel to give a notice to the proponent for an amended Major Project Impact Statement (MPIS) has been increased from 28 to 35 days.
- The timeframe for the Panel to prepare the draft Assessment Report has been increased from 14 to 28 days.
- A number of timeframes throughout the draft Bill have been modified to allow for additional time with the approval of the Minister.

With the increase in the number of allowable days to some steps in the major projects assessments process, the indicative time to complete an assessment of a major project is 383 days (~ 13 months) or 413 days (~ 14 months) if an EPA optional assessment is required for a level 2C activity under the *Environmental Management and Pollution Control Act 1994* (EMPCA). Additional time may be required to finalise any conditions or restrictions (including any in-principle permit commencement conditions) after the Major Project Permit has been granted.

Given the number of approvals that are gained through the major projects assessment process, it is considered that the modifications to the timeframes provide an appropriate balance between ensuring sufficient time to complete an assessment and ensuring the time is not so long as to be unattractive to developers. Specified timeframes also provide certainty in an assessment process.

Loss of current legislative powers for infrastructure providers

TasWater expressed concern that the initial drafting of the Bill does not effectively provide infrastructure providers with sufficient scope to ensure that any necessary infrastructure that might be required to underpin a major project can be provided and/or that the risks of adverse impacts on existing infrastructure arising from a major project can be avoided or mitigated.

In the initial draft Bill, once the major project is declared and a Panel established, a Major Project Proposal is referred to relevant regulators for review. However, given that TasWater was not a relevant regulator under the draft Bill, it would be prevented from being involved in this preliminary assessment process (including input into the 'no reasonable prospect' test).

Response

To recognise and address TasWater's interest under the draft Bill, provision has been made for a regulated entity (i.e. Water Authority); to be included as a relevant regulator similar to the Environment Protection Authority, Heritage Council and Department of Primary Industries, Parks, Water and Environment. Such an amendment would replicate the current 'referral power' under section 56O of the *Water and Sewerage Industry Act 2008*.

Provision has also been made for a gas pipeline licensee to be recognised in the draft Bill to recognise its interests in accordance with the *Gas Pipelines Act 2000*.

Eligibility criteria – meeting two or more of the threshold attributes

In response to broad concerns about the scope for many projects to be declared because they met only one of the eligibility criteria, the draft Bill has been modified to prescribe that if a project is eligible to be declared as a major project, it has to meet two or more of the threshold attributes. This ensures that for projects to be declared, they generally need to be complex and have regionally significant impacts or importance. The exception to this is where a project is unreasonably delayed or beyond the capacity of a planning authority to deal with it.

Response

Section 60J of the revised draft Bill has been modified as follows:

> **60J. When project may be declared to be major project**
>
> (1) Subject to section 60K, a project is eligible to be declared to be a major project under section 60M if, in the opinion of the Minister, the project has 2 or more of the following attributes:

An additional modification to the draft Bill has been made to clarify that the previous subsection 60H(1)(f) is a stand-alone criteria and not part of the threshold tests required by subsections 60H(1)(a) to (e). This is because it applies to when the Minister declares a project to be a major project where a planning authority does not have the capacity or capability to adequately carry

out an assessment or when a project has been unreasonably delayed in the planning assessment process.

The scope of the Minister's declaration powers are too wide – unreasonable delay

The Tasmanian Government identified the Ministerial declaration powers under the PORS assessment process as an area of concern and clarified this in the major projects assessment process in the draft Bill. However, the Ministerial 'declaration' powers still attracted considerable criticism. Whilst the Minister is not involved in any decision in relation to the planning assessment and merely declares that projects are able to be assessed in an independent process, many representors erroneously contended that Ministerial involvement could lead to perceptions of political interference in the major projects assessment process and conflicts of interest.

Currently under the PORS assessment process, the declaration power relates only to the scale or complexity of the project and the relevant Minister has no ability to declare a project for independent assessment where there are unreasonable delays by the local planning authority in conducting the land use planning assessment.

The draft Bill expands the Ministerial declaration powers to include declaring a project to be a major project where a planning authority does not have the capacity or capability to adequately carry out an assessment or when a project has been unreasonably delayed in the planning assessment process.

Response

While the new declaration power is retained, subsection 60J(2) of the revised draft Bill has been modified to provide that the Minister may be of the opinion that a project warrants declaration as a major project only after he or she has consulted with the Tasmanian Planning Commission (the Commission) as to whether a planning authority does not have the capacity or capability to adequately carry out an assessment or an assessment process has been unreasonably delayed. The Minister is not bound to follow any advice provided by the Commission, however, he or she must seek that advice and take it into account before declaring a project under this provision.

Subsection 60J(2) of the revised draft Bill has been modified as follows:

> (2) Subject to section 60K, a project is eligible to be declared to be a major project under section 60M if, after considering advice provided under section 60I(4) and after consultation with the Commission, the Minister is of the opinion that –
>
> (a) the project is of such a scale or complexity, or has such characteristics, that a planning authority that, were the project not a major project, would be required to assess under this Act an application for a permit in relation to the project, is unlikely to have the capacity or capability to adequately carry out the assessment or to do so in a timely manner; or

(b) the determination by a planning authority of an application for a permit in relation to the project has been unreasonably delayed.

In addition, the Commission has the capacity to issue Determination Guidelines to assist the Minister in applying the eligibility criteria when determining whether to declare a project to be major project and the matters to which the Minister is to have regard. The Determination Guidelines can cover what the Commission considers an 'unreasonable delay' in an assessment of an normal Development Application (DA) by a planning authority.

Excluding tall buildings from the major projects assessment process

Concerns were raised about provisions in the previously exhibited draft Bill in relation to a proposal that is over the Acceptable Solution for height in the relevant planning scheme or Local Provisions Schedule. Some clearly misunderstood that the intent of the provisions was to exclude such proposals from being declared as a major project. Other submissions indicated that this type of exclusion could result in unintended and undesirable consequences by limiting genuinely significant proposals being elevated to the higher level assessment.

The wording included in the draft Bill was intended to ensure that only complex projects with broader regional implications are eligible to be elevated for assessment through the major projects assessment process. In particular, the changes sought to clarify that where a project includes a proposal for a building that exceeds the Acceptable Solution under the relevant planning scheme for building height, the height is not a relevant consideration for the purposes of determining whether the project is a major project. The changes also sought to ensure that where a project consisted of public infrastructure (i.e. a wind farm) or was for a public purpose (i.e. a hospital) it could still be considered as a major project regardless of whether the proposal exceeded the Acceptable Solution under the relevant planning scheme for building height.

Response

It is acknowledged that a number of representors and community members misunderstood the intention of the Tasmanian Government to unambiguously exclude tall buildings (which are not for public infrastructure or public purposes) from the major projects assessment process in the previously exhibited draft of the Bill. Therefore, the subsections relating to tall buildings have been redrafted to simply exclude buildings that are solely or predominantly for a hotel, office or residential use which exceed the permitted height of the relevant planning scheme irrespective of their scale or impact.

Subsection 60K(1) of the revised draft Bill has been modified as follows:

> **60K. When project ineligible to be declared to be major project**
>
> (1) Despite section 60J, a project is not eligible to be declared to be a major project under section 60M if the project is to consist of, or include, the development of a building, if all of the building is to be developed, or the building is predominantly to be developed, to enable –
>
> (a) use by a person, for any period, as residential accommodation, whether as an owner, occupier, tenant, lodger or guest and whether the accommodation consists of a hotel, motel, apartments or otherwise; or
>
> (b) use for the purposes of offices –
>
> if the height of the building is to be higher than the acceptable solution for building height that applies, in relation to such a building, under the planning scheme in respect of the land to which the project relates.

Minister approving guidelines – significant expansion of the Minister's powers

The draft Bill that was previously exhibited specified that the Commission may issue Determination Guidelines as to the matters to which the Minister is to have regard in determining whether to declare a project to be a major project. The draft Bill also specified that these guidelines must be approved by the Minister. The Commission was also able to revoke the Determination Guidelines with the approval of the Minister.

The initial drafting of the Bill also specified that the Commission may issue separate guidelines for the purpose of assisting participating regulators to determine the contents of an assessment requirement notice, and that these guidelines must be approved by the Minister.

Some submissions raised concern that the wording of these subsections in the draft Bill effectively means the Minister 'steps into the major projects assessment process' and approves the basis for an assessment of a major project. The concern is that this constitutes Ministerial involvement and a significant expansion of the Minister's powers in the major project assessment process than was previously afforded under the PORS assessment process.

Response

The Tasmanian Government's intention was not to increase the Minister's powers such that there could be a perception of interference in the independent assessment process. The draft Bill has sought to minimise the Minister's role.

The Determination Guidelines are prepared to assist the Minister in determining whether to declare a project to be a major project, so it is recognised that these should be prepared without requiring the Minister to approve them. The requirement for the Minister's approval of the guidelines prepared by the Commission has been deleted.

This accords with the Panel determining the Assessment Guidelines and the Commission preparing guidelines to assist participating regulators to determine the contents of an assessment requirement notice.

The draft Bill has removed the requirement that the Minister approve any Determination Guidelines (or revoke any Determination Guidelines).

State Policies as a consideration in the declaration process

The initial draft Bill specified that for a project to be eligible for declaration as a major project, it must not be inconsistent with the Tasmanian Planning Polices or a regional land use strategy that applies in relation to the land.

Response

Given that the Tasmanian Planning Policies have not been finalised or enacted through legislation, all references to these Policies have been deleted from the revised draft Bill.

By law, for a project to be eligible for declaration as a major project, it cannot be inconsistent with State Policies. However, to provide certainty and clarification to the public, a reference to State Polices has been inserted at subsection 60J(3) of the revised Bill.

Subsection 60J(3) of the revised draft Bill has been modified as follows:

> (3) A project that is to be situated on an area of land may be declared to be a major project even though a use or development that is proposed to form part of the project is prohibited under a planning scheme that applies in relation to the land, but only if the use or development is not inconsistent with a State Policy or any regional land use strategy that applies in relation to the land.

Application of the Tasmanian Planning Commission Act 1997

Questions arose with regard to the procedures of the Panel and specifically whether the *Tasmanian Planning Commission Act 1997* applies to the major project assessment process as if the Panel was established by the Commission.

Response

Subsections 60W(5) and (6) have been inserted into the revised draft Bill to provide that Part 3 of the *Tasmanian Planning Commission Act 1997* applies to the functioning of a Panel as if a reference in Part 3 to the Commission were a reference to the Panel.

In the event of an inconsistency between a provision of the draft Bill and a provision of Part 3 of this Act, the provision of the draft Bill will apply to the extent of the inconsistency.

The application of Part 3 of the *Tasmanian Planning Commission Act 1997* to the major project assessment process will provide a clear statutory framework on how the Panel conducts the hearing

processes including how the Panel might inform itself, the provision of written evidence and the submission of documents, and the power of a Panel to require documents. It will also specify how people can be represented at hearings, deal with issues of misconduct, contempt or the provision of false or misleading evidence or information.

Establishment and composition of the Development Assessment Panel

With reference to the initial drafting of the Bill, some concerns centred around the Commission being able to establish a Panel, but that "*a person may only be appointed to be a member of a Panel if the appointment of the person as a member is approved by the Minister.*" Representors considered that this involvement of the Minister represents an inappropriate level of control over the composition of the independent assessment body and an expansion of the Minister's powers in the major project assessment process to that provided under the PORS, POSS or planning scheme assessment processes. A number of submissions called for this subsection to be deleted.

This position was supported by some industry groups, which advocated that the Minister should have minimal input into the major projects assessment process to ensure that perceived political interference is not an issue and the public can have confidence in the final decision.

Another view was that the appointment of Panel members should be from a 'pool of experts' that has been approved by the Minister. The Commission would then make an appointment from the approved 'pool of experts' rather than each Panel member being individually approved by the Minister. The positons of the Chairperson of the Panel and a nominee of the relevant local councils would not be drawn from this 'pool of experts'.

Response

The Minister is responsible for determining whether a project is eligible to be declared a major project and assessed under the major projects assessment process. The assessment of an eligible major project is conducted by an independent and expert Panel established by the Commission.

As explained above, the Tasmanian Government's intention was not to increase the Minister's powers such that there could be a perception of interference in the independent assessment process. The draft Bill has sought to minimise the Minister's role.

Additionally, the maintenance of a 'pool of experts' will require administrative work whereby the Commission would need to recruit prospective members and ensure that the pool is up to date should a major project be declared at any point in time.

With respect to the Minister approving a 'pool of experts', section 60V of the revised draft Bill has been modified as follows:

60V. Appointment of members of Panel

(1) The Commission is to establish under section 60U a Panel in relation to a major project by appointing to be members of the Panel –

(a) a member of the Commission, or any other person nominated by the Commission, who is to be the chairperson of the Panel; and

(b) a person, with appropriate qualifications and experience, who is nominated by the councils for the municipal areas that are within any regional areas in which part or all of the project is to take place; and

(c) a person who is not a member of the Commission and who, in the opinion of the Commission, has qualifications or experience that are relevant to the assessment of the project.

(2) The person appointed under subsection (1)(a) must not be a person who is appointed to the Commission under section 5(1)(g) or (h) of the *Tasmanian Planning Commission Act 1997*.

(3) A person has appropriate qualifications and experience for the purposes of subsection (1)(b) if the person has –

(a) qualifications or experience in land use planning, urban and regional development, commerce or industry; or

(b) practical knowledge of, and experience in, the provision of buildings or other infrastructure.

(4) The Commission is to request the councils within all regional areas in which all or part of a major project is to take place to together nominate, within 21 days after receiving the request, a person for the purposes of subsection (1)(b).

(5) If the councils have not nominated a person within 21 days after receiving a request to do so, the Commission may appoint a person for the purposes of subsection (1)(b), even though the person has not been nominated by the councils, if the person satisfies the requirements of subsection (3).

(6) If the Commission is of the opinion that the scale, specialist nature or complexity of a major project makes it desirable to do so, the Commission may appoint to be members of the Panel, in addition to the persons appointed under subsection (1), not more than 2 other persons.

(7) A person appointed under subsection (6) in relation to a major project is to be a person who has the qualifications and experience that the Commission thinks appropriate to assist in the assessment of the project.

(8) The Commission may at any time revoke the appointment of a member of a Panel and appoint under subsection (1) another person in the place of the member.

(9) A member of a Panel is entitled to be paid the remuneration that the Minister determines.

(10) Despite subsection (9), a member of a Panel who is a State Service employee or State Service officer is not entitled to remuneration under that subsection except with the approval of the Minister administering the *State Service Act 2000*.

Procedures of the Development Assessment Panel

Questions arose about the establishment of consistent procedures for conducting the major project assessment process, similar to the procedures used by the Resource Management and Planning Appeal Tribunal (RMPAT). Some submissions considered that the Commission's current administrative procedures lack consistency between assessments and that Panel proceedings should be consistent and clearly set out rather than determined by individual Panels for each matter.

Response

The preparation of consistent administrative procedures is supported and will bring the process in line with those proceedings conducted by the RMPAT.

The draft Bill has been modified to ensure that the *Tasmanian Planning Commission Act 1997* applies to the functioning of a Panel's functioning and procedures. In addition, a new section has been inserted into the revised draft Bill to address the provision of false or misleading information from a proponent.

Section 60ZZZN of the revised draft Bill states the following:

60ZZZN. False information

A proponent in relation to a project must not, under this Division, provide to the Minister, orally or in writing, any statement, document, or representation, in relation to the project, that the person knows to be false or misleading in any material particular.

In this regard, the Minister can revoke a declaration of a major project if the proponent has provided to the Minister or the Panel information that is false or misleading.

The revised draft Bill has also been modified at section 60W to include a new subsections 60W(2), (3) and (4) that specify that the Commission is to approve procedures for the conduct of proceedings of Panels.

60W. Quorum, procedure and powers of Panel

(1) The quorum for a Panel is 3.

(2) The Commission is to approve procedures, not inconsistent with the provisions of this Division, for the conduct of proceedings of Panels.

(3) A Panel is to conduct its proceedings in accordance with the procedures, if any, approved under subsection (2).

(4) A Panel may determine its own procedures for the conduct of proceedings, which procedures may not be inconsistent with the procedural requirements of this Division and the procedures, if any, approved under subsection (2).

Participating regulators to provide final advice after hearings

The draft Bill that was publically exhibited stated that "*a participating regulator must, before the end of the 28-day period beginning on the day that the public exhibition of a major project*" provide the Panel with its final advice.

Concerns were raised that given the limited timeframes (from the conclusion of the public exhibition period) in which the participating regulators are required to finalise their advice to the Panel, it is unclear how any additional information that may be raised during the hearing process could be incorporated into that advice. The 28-day period meant it was possible that the participating regulator's final advice might be required prior to a hearing being held.

Response

It is acknowledged that participating regulators might require time after the hearing process to finalise their final advice to the Panel, so they are able to take into account any issues raised during a hearing. A new subsection 60ZZG(1) has been inserted into the revised draft Bill as follows:

(1) A participating regulator in relation to a major project must, before the end of 14 days after the last hearing in relation to the project is held or on a later day that is approved by the Minister, give to the Panel a notice (the **participating regulator's final advice**) in relation to the major project.

Minor amendment of a Major Project Permit

The initial drafting of the Bill generally implied that a minor amendment to a Major Project Permit can only be made if it involves an amendment to a 'condition or restriction' imposed on the Major Project Permit by a participating regulator.

However, the relevant decision-maker might also need to make a minor amendment to a use or development for which the permit was issued – providing that the change does not cause an increase in detriment to any person other than the proponent, and does not change the use or development other than by changing the description of the use or development in a minor way.

Response

It is acknowledged that minor amendments could be made to a Major Project Permit if the alteration does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.

In this context, the revised draft Bill has been modified to more clearly specify this outcome by removing specific references to amend only a 'condition or restriction' imposed on the Major Project Permit. If making a minor amendment to a Major Project Permit, the relevant decision-maker also needs to be satisfied that it will:

- further the objectives specified in Schedule 1 under LUPAA;
- not be inconsistent with any State Policy; and
- not be inconsistent with any regional land use strategy that applies in relation to the land.

Two-year restriction on making a new application if the major project is refused

Concern was raised that the initial drafting of the Bill specifies that a proponent cannot re-submit a project to be re-assessed as a major project within two years of it being refused by a Panel. The concern was that a broader policy/planning setting (i.e. a regional land use strategy or a Local Provisions Schedule) might be amended within the two-year period and the amendment might enable a major project to be approved because it was no longer inconsistent with the setting.

Response

The two-year limitation would generally be appropriate where a project had been revoked because there was 'no reasonable prospect' that the project could be approved.

A parallel provision under LUPAA, at subsection 62(2), specifies that where RMPAT has determined an appeal, an application, within a period of two years from the date on which the RMPAT made its decision, cannot be made unless RMPAT provides permission. This allows for instances where there is a change to the broader policy/planning settings such as a change to the regional land use strategies. If a change means that a permit in respect to a use or development is no longer inconsistent with the setting, an application for a permit can be re-submitted.

In the context of the above, section 60ZZZL of the revised draft Bill has been modified to allow the Commission to provide its permission for the proponent to apply to a planning authority to grant a permit in relation to a project that is the same as, or substantially the same as, the major project.

Section 60ZZZL of the revised draft Bill has been modified as follows:

60ZZZL. Restriction on certain applications for permits or amendments to LPS

Except with the permission of the Commission, a person may not, within 2 calendar years from the date of a decision by a Panel under section 60ZZN(1)(b) to refuse to grant a major project permit in relation to a major project, or from the date of a revocation of a declaration of a major project under section 60S –

(a) apply to a planning authority to grant a permit in relation to a project that is the same as, or substantially the same as, the major project; or

(b) request the planning authority under section 37(1) to prepare a draft amendment of an LPS that is substantially the same as a draft amendment of an LPS prepared in accordance with section 60ZZZJ(1) in relation to the project.

Other key issues raised in the submissions – no modifications

Landowner consent

The Tasmanian Farmers and Graziers Association (TFGA) contended that the draft Bill highlights the disparity in rights between public land and privately-owned land. The TFGA raised concern that there is a need for protections to preclude proponents using the major projects assessment process to overwhelm objections, or as a de facto mechanism, to 'short cut' what would be otherwise a lengthy approval process. The TFGA considered that this concern is particularly relevant to mining applications and ensuring private landowners are not disadvantaged by any assessment process.

A number of other submissions contended that the current setting in the draft Bill for requiring landowner consent only for Crown land or land owned by a local council only is supported.

Response

Where either the Crown or a local council owns the land that will be subject to the proposed use and development, landowner consent is required before a project can be declared as a major project.

Additionally, a project cannot be declared as a major project unless the owner of the land or the local council (for land that is occupied or administered by a local council but not owned by it) has been notified.

The proposed major projects process has no relationship to particular development proposals. In light of the above, it is considered that the setting for landowner consent in the draft Bill is appropriate.

Eligibility criteria – overly prescriptive and extensive

The Department of Treasury and Finance noted that the draft Bill sets out the requirements of a Major Project Proposal, which is needed at the outset for the Minister to declare a project to be a major project. The Department considered that the requirements are overly prescriptive and extensive and it questioned why the information requirements are always necessary in order to establish whether a proposed project is a major project, or whether the information could be required further into the assessment phase.

The Department was also concerned that there appears to be no opportunity for the Minister to request additional information from the proponent before considering declaring a project to be a major project.

Response

No change to the draft Bill is proposed because it is considered that the information required to be included in the Major Project Proposal is appropriate. The information required broadly includes:

- the name and contact details of the proponent and detail on their experience and financial capacity to implement the project;
- the name and description of the project;
- the proposed timetable for the project;
- an outline of the proposed location of the project and a general site location plan;
- the anticipated effect, if any, on other areas of land, of the project or infrastructure associated with the project;
- a general description of the physical environment that may be affected by the project and the key environmental, health, economic, social and heritage effects of the project – that the proponent has identified;
- any surveys and studies that are proposed or are being undertaken and any consultations or feasibility assessments that might have occurred;
- how, if at all, the project may make a significant contribution to the economic or social development of the region in which the project is to be situated; and
- any amendments that might be required to be made to a Local Provisions Schedule in order for the project to comply with the requirements of the relevant planning scheme.

This information is necessary in order for the Minister to determine whether the project is suitable to be declared a major project. It is also required to enable the participating regulators and the Panel to identity those matters that are required to be included in the proponent's Major Project Impact Statement, and any conditions or restrictions that each participating regulator and the Panel requires to be included in the Assessment Guidelines for the major project, prior to the documentation being publically exhibited.

The Minister may request further information from the proponent or a planning authority if it is reasonably necessary to enable the Minister to determine whether to declare a project to be a major project. Section 60G of the revised draft Bill specifies that the Minister may request the proponent to provide further information and incorporate the information into the Major Project Proposal if it is reasonably necessary to enable the Minister to determine whether or not to declare the project. Section 60H also specifies that the Minister can request the planning authority to provide additional information prior to declaring a project.

Eligibility criteria – proposals not being inconsistent with other planning mechanisms

There was concern around the open interpretation of the eligibility criteria used to determine whether a project is eligible to be declared a major project. The concern extended to the wording specified in the previous subsection 60H(7):

> A project that is to be situated on an area of land may be declared to be a major project even though a use or development that is proposed to form part of the project is prohibited under a planning scheme that applies in relation to the land, but only if the use or development is not inconsistent with the TPPS or a regional land use strategy that applies in relation to the land.

This wording was considered to be 'very open' and could allow prohibited use or development to be submitted by virtue of omission to specifically rule them out in a Tasmanian Planning Policy (TPP) or regional land use strategy. This was considered as being too broad.

Response

As identified previously, given that the TPPs have not been finalised or enacted through legislation, all references to these Policies have been deleted from the revised draft Bill.

Notwithstanding the above, no other change is proposed to the draft Bill because the settings are consistent with current laws and assisted by any Determination Guidelines that are prepared by the Commission to assist the Minister in deciding whether to declare a project to be a major project.

Ensuring the effective operation of the major projects assessment process

Some submissions referred to the need to ensure that the TPPs, regional land use strategies and State Planning Provisions are in place and kept up-to-date because they underpin the effective operation of the major projects assessment process.

For example, the Environmental Defenders Office (EDO) referred to the publically exhibited draft Bill, where the provisions allowed a project to be declared a major project even where it would be prohibited under the applicable planning scheme, provided the project is "*not inconsistent with the TPPs or a regional land use strategy that applies in relation to the land.*"

The EDO's position is that if the draft Bill is passed, it is likely that the State Planning Provisions and Local Provisions Schedules applying to any referred project will have been recently subject to public review and determination by the Commission. Therefore, if the TPPs are used to justify a development that is otherwise inconsistent with a planning scheme, it exemplifies that the policies are important documents that must be subject to the highest level of public scrutiny before being adopted.

If these mechanisms are in place and up-to-date, the EDO cautions against allowing projects that are inconsistent with those provisions without strong justification.

Response

The implementation of the TPPs, regional land use strategies and State Planning Provisions is supported. It is acknowledged that these mechanisms underpin the effective operation of the major project assessment process.

Lack of appeal rights

Concerns were raised about there being no rights for community groups, affected community members or proponents to appeal a decision or the approval of a Major Project Permit. It was considered that merits-based appeal rights in respect to the assessment and approval processes would help to ensure any decisions of the Panel or participating regulators were both robust and reasonable.

Response

Under the major projects assessment process, members of the community will have an opportunity to comment on the draft and final Assessment Guidelines, make a representation on the proponent's Major Project Impact Statement and the Panel's draft Assessment Report, and attend a hearing to help the Panel reach a decision on a Major Project Proposal.

The decision on the merit of a major project is final because it also comes from an independent and expert Panel established by the Commission. In these circumstances, it is not necessary or appropriate to provide a right of appeal to a second expert planning body such as RMPAT. For this reason, there are no merit review rights under the current PORS process or for appeals on planning scheme amendment decisions made by the Commission.

However, consistent with appeal rights that apply under the PORS process and to decisions of the Commission, the final decision is subject to judicial review by the Supreme Court on a matter of law in accordance with the *Judicial Review Act 2000*.

Revised draft Major Projects Bill 2018

The draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2018 introduces a four-stage assessment process to implement the reforms:

Stage 1: Eligibility determination

Stage 2: Preliminary assessment including the no reasonable prospect test

Stage 3: Assessment and determination on whether to grant a Major Project Permit

Stage 4: Satisfaction of in-principle commencement conditions and the commencement of the Major Project Permit

Appendix A provides a flowchart of the major projects assessment process.

The key features of the proposed model and the features that will be retained and built upon from the current PORS process were initially described in the first consultation paper titled: *Major Projects - Land Use Planning and Approvals Amendment (Major Projects) Bill 2017: Consultation Paper & Draft Exposure Bill*. This consultation paper supported the first five-week public consultation process for the draft Bill and it can be accessed on the Tasmanian Planning Reform website at http://www.planningreform.tas.gov.au/updates/major_projects_reforms.

Stage 1: Eligibility determination

Lodgement of a Major Project Proposal

Under the draft Bill, the statutory process commences when a proponent requests the Minister to declare a project to be a Major Project or when the Minister declares a project under section 60M. Where the proponent requests the Minister to declare the project, the request must be accompanied by a Major Project Proposal. Where the Minister is considering declaring a project 'of his or her own motion', the Minister may require a proponent to provide a Major Project Proposal.

The Major Project Proposal must contain sufficient information to address the eligibility criteria contained in section 60J of the Bill. These expand the existing eligibility criteria under PORS to include the situation where a planning authority is unlikely to have the capacity or capability to adequately carry out an assessment or the project has been unreasonably delayed by a planning authority in the development assessment process.

The requirements for a Major Project Proposal are set out in the draft Bill. The revised Bill makes some minor changes to achieve greater consistency with the requirements for a Notice of Intent under EMPCA in order to ensure that the proponent provides relevant information required by the EPA Board.

Assessment against the eligibility criteria

The Minister assesses the proposal contained in the Major Project Proposal against the eligibility criteria prescribed in section 60J and determines whether to declare the proposal a Major Project under section 60M. To be eligible for declaration, the Minister must consider that the project has two or more of the attributes set out in section 60J. The attributes include significant financial and social contribution, strategic planning significance, significant effects on public infrastructure, and potentially significant environmental, economic or social effects.

The Minister must notify the planning authority for the land on which the project is proposed to be situated of the request for declaration and provide a copy of the Major Project Proposal. The planning authority may notify the Minister whether it considers that the project should be declared. The Minister may request further information from the proponent, or information from the relevant planning authority, that is relevant to the decision whether to declare the project.

The Minister may consult with or seek advice from State Service Agencies or other State authorities before making a decision on whether to declare a major project. Section 60L provides for the Commission to issue Determination Guidelines to assist in applying the eligibility criteria. The previous draft of the Bill required the Determination Guidelines to be approved by the Minister; however, in response to the submissions received this requirement has been removed.

Ministerial determination

The Minister may, by notice in the *Tasmanian Government Gazette* (the *Gazette*), declare a proposal to be a major project under LUPAA. The Minister's decision must also be published in a newspaper that circulates generally in Tasmania. The Minister must consider any advice from the relevant planning authority prior to deciding whether to declare the project a major project.

The Minister is also required to notify the proponent, all planning authorities in the region in which the project is located, the Commission, relevant State Service Agencies and (where the project is located on land in Wellington Park) the Wellington Park Management Trust, of the Minister's decision (including a decision not to declare the project) under section 60P.

Under the draft Bill, the Minister cannot declare a project unless consent has been obtained from the relevant local council (if the land on which the project is situated is owned by the council), the Crown

(where the land on which the project is situated is Crown land), or the Wellington Park Management Trust (where the land on which the project is to be situated is in Wellington Park).[1]

The Minister then forwards the Major Project Proposal and any other information provided by the proponent or the relevant planning authority to the Commission.

Stage 2: Preliminary assessment

Establishment of the Development Assessment Panel

Once a major project is declared, the draft Bill requires the Commission to establish a Development Assessment Panel (a Panel) under sections 60U and 60V. A Panel must comprise a minimum of three and a maximum of five members.

The Panel will be chaired by a member or nominee of the Commission and must include a person with relevant expertise nominated by the local councils within the relevant area, and a member with expertise in land use planning, urban and regional development, commerce or industry or practical knowledge and experience in the provision of buildings and other infrastructure.

The Commission is also to approve procedures for the conduct of proceedings of Development Assessment Panels in accordance with subsection 60W(2).

'No reasonable prospect' test

The Panel and participating regulators will have the opportunity to review the Major Project Proposal and identify whether, for any reason, there is 'no reasonable prospect' that the major project can be approved, in its current form.

However, should this occur, section 60ZG requires the Panel to notify the proponent and provide the reasons for its view, and invite the proponent to respond. The proponent may wish to submit further information, an amended Major Project Proposal or recommend that the Minister revoke the project's major projects status. The Panel must consider any comments from the proponent and consult with participating regulators prior to recommending that the Minister revoke the project's 'major project' status under section 60ZH. The Minister may revoke the major project's status following receipt of the Panel's advice under section 60S.

[1] These are respectively: The General Manager of the relevant local council, the Minister responsible for Crown land, and/or the Wellington Park Management Trust.

Preparation of the draft Assessment Guidelines

Following the establishment of the Panel, the draft Bill requires each of the relevant regulators (the EPA Board, Heritage Council, Aboriginal Heritage Tasmania, Department of Primary Industries, Parks Water and Environment, regulated entity and gas pipeline licensee) to advise the Panel on the following:

1. Whether the regulator intends to conduct an assessment of the project. A regulator that indicates it intends to assess the project becomes a 'participating regulator' for the purposes of the draft Bill; and
2. The matters that the regulator requires to be included in the proponent's Major Project Impact Statement (MPIS) for the project and any conditions or restrictions that the regulator requires to be included in the Assessment Guidelines for the project.

Any conditions proposed at this stage are draft only and subject to consideration of the proponent's MPIS, public exhibition and hearings. Proposed conditions may include an in-principle permit commencement condition (IPPCC), which is a condition that can be placed on a permit requiring the proponent to provide further documentation for approval prior to the permit commencing (refer section 60ZZP). The bulk of proposed conditions to be complied with after commencement of the permit are expected to be identified following assessment of the proponent's MPIS and consideration of representations provided during public exhibition and hearings on the project. However, the ability to propose conditions at this early stage enables regulators to flag any obvious conditions that they intend to require on the permit, subject to review of the MPIS and public representations. This is designed to give proponents early notice of proposed conditions where possible.

Section 60ZL provides for the Panel to prepare draft Assessment Guidelines. Prior to preparing the draft Assessment Guidelines, the Panel is required to consult with the Commission, the relevant planning authority or authorities for the region in which the project is proposed to be located, any relevant State Service Agencies, the Minister responsible for the *Crown Lands Act 1976*, and (where the project is proposed to be located in Wellington Park) the Wellington Park Management Trust.[2]

The Panel prepares the draft Assessment Guidelines in accordance with section 60ZO, including any land use planning considerations such as matters, draft conditions, or restrictions, that the Panel considers are necessary for the purposes of implementing effective and appropriate planning of the use and development of land. Matters relevant to this are set out under section 60ZN and include the relevant planning scheme(s) and regional land use strategy, the objectives specified in Schedule 1 of

[2] The Commonwealth Minister's requirements under the Bilateral Agreement in relation to a major project, if relevant, are incorporated into the draft Assessment Guidelines and met through the major projects assessment process.

LUPAA, and applicable State Policy or planning directive and whether an amendment to the planning scheme (or relevant Local Provisions Schedule, once the Tasmanian Planning Scheme is in place) is required.

The Panel consolidates the advice from the participating regulators into the draft Assessment Guidelines that are released for public consultation for a period of 14 days under section 60ZL. Comments on the draft Assessment Guidelines are then provided to relevant regulators and they have the opportunity to amend their assessment requirement notice to the Panel setting out what should be included in the Panel's Assessment Guidelines and the proponent's MPIS.

The Panel finalises the Assessment Guidelines and publically notifies in a newspaper that circulates generally in Tasmania that the guidelines have been finalised and where they may be viewed.

Stage 3: Assessment and determination

Preparation of the Major Project Impact Statement

After the Panel has finalised the Assessment Guidelines and provided them to the proponent, the proponent prepares its MPIS. Section 60ZR specifies that the proponent is required to provide the Panel with an MPIS addressing the matters in the Assessment Guidelines within 12 months of the request.

An MPIS is specified in section 60ZS as a statement that addresses the matters set out in the Assessment Guidelines, including any surveys, studies and other reports that may be required under the guidelines. It must include a statement whether the proponent considers that an amendment would be required to a Local Provision Schedule[3] in order for the project to comply with the relevant planning scheme for the area in which it is proposed to be sited. If the proponent considers that such an amendment is required, the MPIS must include sufficient information to identify the nature and scope of the amendment required. The MPIS can also include a statement from the proponent on any conditions or restrictions proposed in the Assessment Guidelines and how the proponent proposes to address those conditions or restrictions if a Major Project Permit were granted.

In some cases, the proponent may require a permit from a participating regulator to undertake the studies or surveys required to address the Assessment Guidelines. Section 60ZQ provides that a participating regulator must issue the required project-related permit in order for the proponent to undertake any studies that are required to prepare a MPIS – where it is reasonably necessary for the

[3] Under the transitional provisions in the draft Bill, where the relevant LPS has not commenced the reference to an LPS is taken to be a reference to a planning scheme.

proponent to engage in an activity that is not permitted under a project-associated Act except if there is a project-related permit in relation to the activity. This is intended to avoid the need for the proponent to apply for a separate permit to establish the information required to comply with the Assessment Guidelines.

Suitability of the Major Project Impact Statement for public exhibition

The Panel, following advice from participating regulators on whether the MPIS complies with the Assessment Guidelines, determines whether the MPIS is suitable for public exhibition under section 60ZW. Where further information is required from the proponent by either the Panel or a regulator, the Panel may request this information and (where applicable) provide it to the relevant regulator. Section 60ZV also specifies that the Panel may seek an amended MPIS from the proponent within a period of 35 days after receiving the MPIS (or within the period specified in a notice of non-compliance that was given by the participating regulator under section 60ZU(2)). If the Panel determines that a MPIS is not suitable for public exhibition, the proponent is notified and may submit another MPIS. If a MPIS not ready for public exhibition, the Panel must only give notice that a MPIS is not suitable for public exhibition within 12 months after the first MPIS was provided to participating regulators.

Preliminary advice from participating regulators

Under the draft Bill, each participating regulator assesses the MPIS against the Assessment Guidelines and advises the Panel whether it intends to direct the Panel to refuse to grant a Major Project Permit (including the reasons for this) or grant the permit with or without conditions, including specifying any relevant conditions under section 60ZZ.

Participating regulators are required to provide this advice within 60 days or 90 days[4] of receiving the MPIS. Where a participating regulator requires further information from the proponent in order to satisfy the Assessment Guidelines, the clock stops while the information is provided.[5]

Preparation of the draft Assessment Report

The Panel has 28 days from receiving advice from the last participating regulator to prepare a draft Assessment Report for the major project.

Section 60ZZA provides that the draft Assessment Report must include the Panel's opinion on whether the MPIS meets the matters set out in the Assessment Guidelines. The draft Assessment Report must also include a statement of each regulator's opinion on the extent to which the MPIS meets the

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[4] Where the EPA Board determines that the relevant activity constitutes a level 2C matter under EMPCA.

[5] Requests for further information are coordinated through the Panel and must be made within 35 days of receipt of the MPIS.

requirements of that regulator contained in the Assessment Guidelines; a statement of any other information provided to the Panel by the proponent; any conditions or restrictions that the Panel proposes to place on the Major Project Permit if it were granted; and any draft planning scheme amendment[6] that would be required for the major project to proceed.

Public exhibition of the major project

In accordance with section 60ZZB, within 14 days of preparing the draft Assessment Report, the Panel must give notice of the public exhibition of the project. This includes notification of the period (a minimum of 42 days) during which the Assessment Guidelines, MPIS, draft conditions or restrictions and draft Assessment Report (including any draft planning scheme amendment) will be exhibited.

The Panel also notifies all planning authorities in the region in which the project is located, all State Service Agencies consulted in developing the Assessment Guidelines for the major project, and (if all or part of the land is in Wellington Park) the Wellington Park Management Trust of the public exhibition of the project.

The draft Bill provides for representations on the project, including on the conditions and restrictions included in the draft Assessment Report, any conditions or restrictions that a representor considers ought to be specified on a Major Project Permit that may be granted for the project and any draft planning scheme amendment under section 60ZZD.

Once received by the Panel, representations are to be referred to relevant participating regulators for consideration.

The draft Bill allows participating regulators to request further information from the proponent, through the Panel, within 28 days following the end of the public exhibition period if required in order to determine whether to grant the Major Project Permit and the conditions to be included.

Hearings into representations

Section 60ZZE provides for the holding of hearings. As soon as practicable after the public exhibition of the major project, the Panel holds hearings into the representations received during the public exhibition period. Under the draft Bill, the Panel is required to notify participating regulators of the intention to hold each hearing.

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[6] Under the transitional provisions in the draft Bill, once the relevant LPS has commenced, the reference to 'draft planning scheme amendment' becomes a reference to a draft amendment to the relevant LPS. There is no mechanism to amend the State Planning Provisions under the draft Bill. Such an amendment would need to follow the process in Part 3 Division 2 of LUPAA.

Advice from participating regulators on whether to grant a permit

Under the draft Bill, each participating regulator must advise the Panel within 14 days after the last hearing whether it directs the Panel to grant or refuse to grant the Major Project Permit and any conditions or restrictions to be placed on the permit.

The conditions or restrictions, which a participating regulator might require on the Major Project Permit, are set out in section 60ZZG and they may include in-principle permit commencement conditions (IPPCCs).

The effect of sections 60ZZZG, 60ZZH, 60ZZXI, 60ZZJ, 60ZZK and 60ZZL is that a participating regulator can only direct the Panel to grant or refuse to grant a Major Project Permit if the regulator would make the same determination under its own legislation if the project were not assessed as a major project under LUPAA.

A participating regulator must consider any relevant matters that were raised in hearings prior to providing its advice to the Panel and must give reasons for requiring a condition or restriction or directing the Panel to refuse to grant the permit.

Grant or refusal of the Major Project Permit

Section 60ZZN specifies that the Panel is to determine whether to grant a Major Project Permit (with or without conditions or restrictions). Section 60ZZO specifies that the Panel has 60 days from the end of the public exhibition period, or within a longer period allowed by the Minister, to decide whether to prepare a Final Assessment Report and grant a Major Project Permit.

In deciding whether to grant the Major Project Permit, the Panel must consider representations made during the public exhibition period.

The Panel may only grant the Major Project Permit where:

- it is satisfied that to do so will further the objectives specified in Schedule 1 under LUPAA;
- it will not be inconsistent with a State Policy;
- the Assessment Guidelines have been satisfied;
- the proponent has paid the relevant fee;
- it has received advice from each participating regulator in the form of its final advice on whether a permit ought to be granted; and
- no participating regulator has advised that a permit should be refused.

Where there are inconsistencies between the conditions or restrictions required by different participating regulators, section 60ZZP provides that the Panel is responsible for resolving the

inconsistencies, in consultation with the relevant participating regulators, in the manner that best achieves the purpose for which those conditions or restrictions are required.

Where the Panel intends to grant a Major Project Permit with conditions or restrictions, at least 28 days before granting the permit, it must provide a copy of the proposed conditions or restrictions to the proponent, the relevant planning authority, each State Service Agency that the Panel believes has an interest in the major project, each participating regulator, and (if all or part of the land is in Wellington Park) the Wellington Park Management Trust.

Under section 60ZZQ, each party notified has 14 days to object to the proposed conditions or restrictions or propose any other conditions or restrictions for inclusion on the Major Project Permit. The Panel is required to forward any such submissions to the participating regulator responsible for the relevant condition or restriction and the regulator may, within 14 days of receiving the objection, revise its advice to the Panel accordingly.

The Panel must then notify the proponent, the relevant planning authority, each State Service Agency that the Panel believes has an interest in the major project, each participating regulator, and (if all or part of the land is in Wellington Park) the Wellington Park Management Trust of any conditions or restrictions imposed on the Major Project Permit and provide them with a copy of the conditions or restrictions.

Final Assessment Report

If the Panel grants a Major Project Permit, it must prepare a final Assessment Report that sets out the reasons for the decision and if the decision is to grant a permit in relation to the major project, the reasons for imposing the conditions or restrictions on the permit. The Panel must also give notice of the grant of the permit in the *Gazette* and in a newspaper that circulates generally in Tasmania, and the Commission is required to place a copy of the permit and the final Assessment Report on its principal website.

Stage 4: Commencement of the Major Project Permit

In-principle permit commencement conditions

Under section 60ZZT, a Major Project Permit may include an IPPCC. As explained above under Stage 2 (Preparation of the draft Assessment Guidelines), this is a condition that can be placed on a permit requiring the proponent to provide further documentation for approval by the participating regulator that imposed the condition on the permit prior to the permit commencing. This is intended to enable regulators to defer the assessment of technical issues that they consider do not need to be fully resolved in order to recommend that a Major Project Permit be granted. These provisions have

been included in the draft Bill to avoid proponents investing time and money in preparing complex technical documentation that is not required until after the Major Project Permit has been granted.

Where an IPPCC is placed on a permit, the proponent must provide the required documentation to the relevant participating regulator within the time period specified in the condition.

Under section 60ZZW, the Panel may issue a Permit Commencement Notice in relation to a Major Project Permit on which an IPPCC is imposed. The Panel must also publish the Permit Commencement Notice in the *Gazette*, and in a newspaper that circulates generally in Tasmania.

Correcting clerical mistakes on a permit

Section 60ZZZC allows the relevant decision-maker to amend a Major Project Permit to correct:

- a clerical mistake, or an error arising from any accidental slip or omission;
- an evident material miscalculation of figures; or
- an evident material mistake in the description in the Major Project Permit.

If the relevant decision-maker amends a Major Prospect Permit to correct an obvious clerical mistake or miscalculation, it must notify each owner or occupier of land to which the permit relates, the planning authority for the land, and each participating regulator in relation to the major project.

The relevant decision-maker must also ensure that a notice, specifying that an amendment has been made and the nature of the amendment, is published in a newspaper generally circulating in Tasmania.

Minor amendments to a permit

It is proposed to retain the existing provisions in LUPAA which enable the Commission or the Panel (where the permit has not taken effect) to make minor amendments to a Major Project Permit. Under 60ZZZE, minor amendments are limited to amendments that will not cause an increase in detriment to any person other than the proponent and do not change the use or development for which the permit was issued, other than by changing the description of the use or development in a minor way.

Under section 60ZZZE, the relevant decision-maker can only make a minor amendment to a Major Project Permit if it is satisfied that the permit, as amended will:

- further the objectives specified in Schedule 1 under LUPAA;
- not be inconsistent with a State Policy; and
- not be inconsistent with any regional land use strategy that applies in relation to the land.

Significant amendments to a permit

The draft Bill includes a process to enable a proponent to apply to the relevant decision-maker[7] to amend a Major Project Permit to authorise a use or development that is in addition to, in substitution for, or of a different scale or nature to, the use or development authorised by the permit. This is subject to the limitation that the amended project must be substantially the same as the original project to which the permit relates.

To ensure that this is the case, section 60ZZZG includes a process whereby the relevant decision-maker must consult with participating regulators to ensure that the proposed change does not constitute a new project altogether.

Where the relevant decision-maker considers that the application represents a significant amendment to an existing Major Project Permit, the application process recognises the existing Ministerial declaration that was issued under section 60M and the assessment process begins with the submission of a revised Major Project Proposal to the Commission.

This would be referred to relevant regulators and the assessment process would then follow the same major project assessment process that applied to the original proposal, including the preparation of Assessment Guidelines, the provision of a MPIS, and public exhibition and hearings.

At the conclusion of this major project assessment process, should all participating regulators approve the significant amendment, the Panel would issue an amended Major Project Permit and follow the same notification requirements that applied to the original permit.

Cancellation of a permit

Section 60ZZZH allows the relevant decision-maker to cancel a Major Project Permit, on the application of each owner or occupier of land to which a major project permit relates and after notifying the proponent or owner (as the case may be).

The relevant decision-maker may also cancel the Major Project Permit if an IPPCC on the permit has not been satisfied within 2 years after the permit has been granted.

If the relevant decision-maker cancels a Major Project Permit, it must notify each owner or occupier of land to which the permit relates, the planning authority for the land, and each participating regulator in relation to the major project.

The relevant decision-maker must also give notice that the Major Project Permit has been cancelled in the *Gazette* and in a newspaper generally circulating in Tasmania.

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[7] The Panel is the relevant decision-maker where the Major Project Permit is yet to take effect. Where the permit has taken effect, the Commission is the relevant decision-maker.

Administration

Enforcement of compliance with conditions

Once the Major Project Permit has taken effect, administration of the permit is transferred to the Commission, which is responsible for maintaining the permit. Responsibility for monitoring and enforcing planning related conditions on the permit transfers to the relevant planning authority. Responsibility for other conditions and restrictions reside with the individual regulators that required those conditions or restrictions on the permit.

Fees

Rather than charging the entire assessment fee for the Panel up-front, it is considered more appropriate to stage the recovery of the fee in line with the work undertaken. It is also considered more equitable to calculate the fee on a cost-recovery basis rather than linking it to the estimated construction costs of the project. In order to achieve this, the draft Bill provides for the making of regulations specifying the relevant fees and when they are due and payable. The method of calculating the relevant fees and the timing of their recovery will be determined in developing the regulations. Points in the process at which fees could potentially be recovered include:

- on declaration;
- on finalising the Assessment Guidelines and/or the draft Assessment Report;
- on the grant of a Major Project Permit; and
- on commencement of the permit.

The draft Bill clarifies that where the permit is granted and the EPA Board or Heritage Council is a participating regulator, the proponent is liable to pay the relevant fee that would have been payable had the proponent made an ordinary application under LUPAA or the fee that would apply under the *Historic Cultural Heritage Act 1995* if the permit were issued under that Act.

Timeframes

Timeframes under the major projects assessment process are intended to be as clear and predictable as possible to provide certainty to proponents while allowing sufficient flexibility for the Panel and participating regulators to conduct their assessments in accordance with their responsibilities under their relevant project-associated Acts.

The indicative time to complete an assessment of a major project is approximately 13 months, or 14 months if an EPA optional assessment is required for a level 2C activity under EMPCA.

Specific timeframes have been included for key assessment steps including:

- No reasonable prospect test: advice from participating regulators to the Panel must be provided within 60 days of regulators receiving the proponent's Major Project Proposal.
- Preliminary advice from participating regulators: must be provided to the Panel within 60 days or 90 days[8] of receipt of the proponent's MPIS.
- Final advice from participating regulators: must be provided to the Panel within 14 days after the last hearing.
- Determination by the Panel on whether to grant a Major Project Permit: the Panel must make a determination within 60 days after the end of the public exhibition period. Within this period, the Panel must provide a copy of the conditions or restrictions that it proposes to include on the Major Project Permit (where the Panel intends to grant a permit) to the proponent and other specified parties at least 28 days prior to determining whether to grant a permit.[9] This effectively means that the Panel must make its decision within approximately 30 days after the end of the public exhibition period.
- With regard to the approval of information provided by the proponent under an IPPCC, participating regulators must determine whether the information is sufficient within 28 days of receiving it from the proponent.

There is no specific timeframe for the conclusion of hearings following public exhibition as the duration of hearings will depend on the level of interest and complexity of issues raised in relation to the major project and this may vary between projects.

The draft Bill also includes timeframes for Ministerial declaration, determining the Assessment Guidelines, for the Panel to seek further information from the proponent (either of its own motion or at the request of a participating regulator), and public exhibition of the MPIS and major project documentation.

[8] Where the project involves an activity that is classified as a level 2C activity under EMPCA.

[9] Within a 28-day period, the proponent and other specified authorities may object to the draft conditions or restrictions, or set out any other conditions or restrictions that the person thinks ought to be specified, within 14 days of receiving them. The Panel then forwards any objections, or other conditions or restrictions, to participating regulators who have 14 days to amend their final advice to the Panel should they so determine.

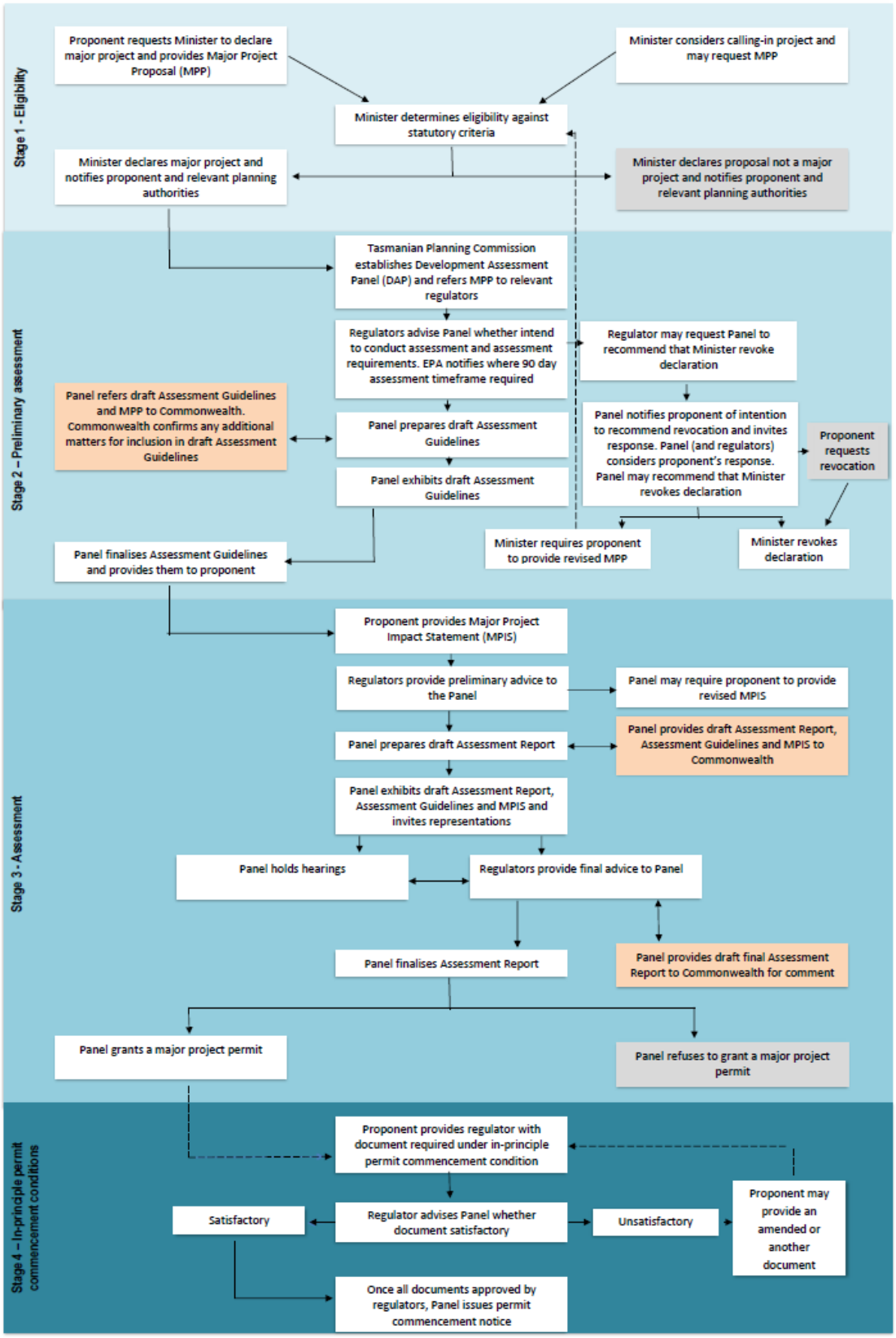
Conclusion

The Planning Policy Unit within the Department of Justice facilitated the first period of public consultation on the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2017 to seek comment on its content. Following the release of the draft Bill for a period of targeted stakeholder consultation, it was publicly released on 28 August 2017 for a five-week period of public consultation that closed on 2 October 2017. In total, one hundred and ninety-eight (198) submissions were received by the Department of Justice.

In response to the submissions received, the draft Bill has been amended and re-structured to clarify its operation. It has been renamed – the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2018. Given the amendments that have been made to the revised draft Bill, it is now being released for a further period of public consultation.

Submissions on the revised draft Bill are invited by close of business on **Monday, 29 January 2018.**

Appendix A: Flowchart of the major projects assessment process



The flowchart includes some indicative steps (shaded orange) that depict requirements to consult with the Commonwealth Government. These steps are subject to confirmation by the Commonwealth Government.

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